

trator, will satisfy, deducting nevertheless to and for himself Allowance of all just, due and principal Debts upon 428 Good Consideration, without Fraud, owing to him by the Intestate at the Time of his Decease, and of all other Payments made by him, which lawful Executors or Administrators may and ought to have and pay by the Laws and Statutes of this Realm.

I. Fraud practised in taking of Administration to deceive others of their lawful Debts.

II. By fraudulent Administration of Intestate's Goods, the Party shall be charged as Executor of his own Wrong. Allowance of just Debts, and other lawful Payments.

An executor in his own wrong is he that takes upon him the office of an executor by intrusion, not being so constituted by the deceased, nor for want of such constitution, substituted by the Court to administer; Godolph. Orph. Leg. Pt. 2, c. 8, s. 1. He thereby renders himself not only obnoxious to the action of the right executor, but also to the suit of the testator's creditors, yet only so far as the goods which he so wrongfully administered do amount unto. And this usurping executor is not in suit to be distinguished from the lawful executor by name or title, but to be sued generally by the name or title of the executor of the last will and testament of the defunct; which, if he deny, he must plead that he neither is executor, nor administered as executor; yet when there is a lawful executor, and another doth administer in his own wrong, it is at the election of the creditors either to sue them jointly together, or both of them severally, and by himself. But note, that there cannot be an administrator by wrong, or in his own wrong, for the law knows no such appellation, *ibid.* s. 2. The law in Maryland is the same, see 1 Harr. Ent. 572, n. a. In *Norfolk v. Gantt*, 2 H. & J. 435, where on the death of a defendant in an action of debt a summons issued to an executor *de son tort*, *eo nomine*, the Court held that it was issued regularly under the Act of 1785, ch. 80,¹ and that he might be made a party to the action, but judgment was reversed which was entered for, &c., *de bonis testatoris*, &c., *si non, de bonis propriis* as to costs, &c., for a judgment against an executor *de son tort* is *de bonis propriis* for assets proved in his hands; but there cannot be judgment against him for assets *quando acciderint*. The form of declaring against an executor *de son tort*, it has been held for centuries, is precisely the same as that of declaring against a rightful executor, the ground being that there was no other form of writ in the register than one charging him as an executor generally. In *Meyrick v. Anderson*, 14 Q. B. 726, debt on bond executed by A. against the defendant as executrix of B., who was executrix of A., and the defendant pleaded that B. died intestate, *without this*, that the defendant was ever *rightful executrix* of B., it was held, on special

¹ Code 1911, Art. 75, sec. 25.